

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

BILLY NELSON,

Plaintiff,

V.

**PENN NATIONAL GAMING, INC.,
L'AUBERGE DU LAC HOTEL &
CASINO; PINNACLE
ENTERTAINMENT, INC.; PNK LAKE
CHARLES LLC D/B/A L'AUBERGE
CASINO and JOHN DOE**

Defendants.

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CIVIL ACTION NO. 3:20-cv-133

JURY TRIAL DEMANDED

**DEFENDANT PNK (LAKE CHARLES) LLC'S
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1441, Defendant PINK (Lake Charles) LLC (“PNK”) hereby removes to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), PNK sets forth the following "short and plain statement of the grounds for removal."

I. THE REMOVED CASE

1. The removed case is a civil action filed with the 405th Judicial District Court of Galveston County, Texas, on March 23, 2020, styled *Billy Nelson v. Penn National Gaming, Inc., L'Auberge Du Lac Hotel & Casino, Pinnacle Entertainment, Inc., PNK Lake*

Charles, LLC d/b/a L'Auberge Casino and John Doe; Cause No. 20-CV-0452 (the "State Court Action").

II. DOCUMENTS FROM REMOVED ACTION

2. Pursuant to FEDERAL RULE OF CIVIL PROCEDURE 81 and 28 U.S.C. § 1446(a), PNK attaches the following documents to this Notice of Removal:

- (a) A list of all parties in the case, their party type and current status;
- (b) a civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court, as required by 28 U.S.C. § 1446(a);
- (c) a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him/her;
- (d) A record of which parties have requested trial by jury; and
- (e) The name and address of the court from which the case is being removed.

III. REMOVAL PROCEDURE

3. Except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed to the United States District Courts for the district and division embracing the place where the action is pending. 28 U.S.C. § 1441. The Galveston Division of the Southern District Court of Texas is the United States district and division

embracing Galveston County, Texas, and the county in which the State Court Action is pending.

4. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders in the State Court Action as of the date of this pleading are attached hereto as *Exhibit "A"* and incorporated herein for all purposes.

5. PNK will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 405th Judicial District Court, Galveston County, Texas, where the action is currently pending.

IV. REMOVAL IS TIMELY

6. PNK has not been served with process in the State Court suit but filed a Special Appearance on April 20, 2020 reserving its challenges to the Court's personal jurisdiction and clarifying a misnomer.

7. Pinnacle Entertainment, Inc. ("Pinnacle") was served with the State Court Action on March 30, 2020. Pinnacle consents to removal.

8. As of the drafting of this Notice, no other defendant has been served with process in the State Court Action.

9. PNK's Notice of Removal is being filed within the time limits specified in 28 U.S.C. § 1446(b).

V.
VENUE IS PROPER

10. The United States District Court for the Southern District of Texas, Galveston Division, is the proper venue for removal of the state court action pursuant to 28 U.S.C. § 1441(a) because the 405th Judicial District Court, Galveston County, Texas, is located within the jurisdiction of the United States District Court for the Southern District of Texas, Galveston Division.

VI.
DIVERSITY JURISDICTION EXISTS

11. This is a civil action relating to a negligence claim that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

12. As admitted in the Petition, Plaintiff is a resident of Galveston, Texas and is domiciled there.¹

13. PNK is a foreign corporation organized, existing and doing business under the laws of the State of Louisiana. Thus, pursuant to 28 U.S.C. § 1332()(1), PNK is not a citizen of the State of Texas.

14. Pinnacle is a Delaware corporation with its principal place of business in Las Vegas, Nevada. Pinnacle is an entity organized and existing under the laws of the

¹ Plaintiff's Original Petition at 1.

State of Delaware with its principal place of business in Las Vegas, Nevada. Pinnacle is not a citizen of the State of Texas.

15. Penn National Gaming, Inc. has not been served with process in the State Court Action, but is a foreign corporation organized and existing under the laws of the State of Pennsylvania.² Penn National Gaming, Inc. is not a citizen of the State of Texas.

VII.
THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

16. Plaintiff alleges in his Petition that he seeks monetary relief "over \$1,000,000."³

17. Based on the aforementioned facts, the State Court Action may be removed to this Court by PNK in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this is a civil action pending within the jurisdiction of the United States District Court for the Southern District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy as pled by the Plaintiff, exceeds \$75,000, exclusive of interest and costs.

VIII.
FILING OF REMOVAL PAPERS

18. Pursuant to 28 U.S.C. § 1446(d), PNK is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with

² See Exhibit A, Plaintiff's Original Petition at 2.

³ Exhibit A, Plaintiff's Original Petition at 1.

the 405th Judicial District Court, Galveston County, Texas, in which this action was originally commenced.

IX.
CONCLUSION

19. Defendant PNK (Lake Charles) LLC hereby removes the above-captioned action from the 405th Judicial District Court, Galveston County, Texas, and requests that further proceedings be conducted in the United States District Court for the Southern District of Texas, Galveston Division, as provided by law.

Respectfully submitted,

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By: /s/ Kevin P. Riley

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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

This is to certify that on the 27th day of April 2020, a true and correct copy of the foregoing has been forwarded to all counsel of record as follows:

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Attorney for Plaintiff

☐ E-MAIL/ E-SERVICE

☒ ECM

☐ HAND DELIVERY

☐ FACSIMILE

☐ OVERNIGHT MAIL

☐ REGULAR, FIRST CLASS MAIL

☐ CERTIFIED MAIL/ RETURN RECEIPT REQUESTED

/s/ Kevin P. Riley

Kevin P. Riley